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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

F.O.F., INC.,

Defendant.

CIVIL ACTION
NO.

C09 5015JKA

CIVIL COST RECOVERY COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of
the United States and at the request of the Administrator of the United States Environmental
Protection Agency (EPA), alleges as follows:

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U.S. Department of Justice
Environmental & Natural Resources Div.
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

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1 any hazardous substance is released into the environment, or there is a substantial threat of
2 such a release into the environment, the President is authorized to act, consistent with the
3 National Contingency Plan, to remove or arrange for the removal of, such hazardous
4 substance.

5 7. The President's authority under Sections 104(a) and (b) of CERCLA, 42
6 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA
7 pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42,237 (August 14,
8 1981), reprinted in 42 U.S.C.A. § 9615 at 544-48.

9 8. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent
10 part:

11 Notwithstanding any other provision or rule of law, and subject only to
12 the defenses set forth in subsection (b) of this section --

13 (1) the owner and operator of a vessel or a facility,

14 (2) any person who at the time of disposal of any hazardous
15 substance owned or operated any facility at which such hazardous
16 substances were disposed of . . .
17 shall be liable for --

18 (A) all costs of removal or remedial action incurred by the
19 United States Government or a State . . . not inconsistent
20 with the national contingency plan . . .

21 9. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides:

22 In any such action described in this subsection [an action for recovery of
23 costs under section 107 of CERCLA], the court shall enter a declaratory
24 judgment on liability for response costs or damages that will be binding on
25 any subsequent action or actions to recover further response costs or
26 damages.

FACTS RELEVANT TO LIABILITY OF DEFENDANT
UNDER SECTION 107 OF CERCLA

10. The Commencement Bay Nearshore/Tideflats Superfund Site is in Tacoma, Washington.

11. EPA placed the CB N/T Site on the National Priorities List (NPL) in 1983. The CB N/T Site consists of seven operable units ("OUs"): (1) the CB N/T sediments; (2) the ASARCO Tacoma Smelter; (3) Tacoma Tar Pits; (4) the Ruston/North Tacoma Study Area; (5) CB N/T source control; (6) Asarco Sediments; and (7) Asarco demolition.

12. On September 30, 1989 EPA issued a Record of Decision ("ROD") that selected the remedy for remediation of sediments, OU1. The ROD identified nine problem areas within OU1 that required sediment cleanup. The nine problem areas are (1) and (2) the Head and Mouth of the Hylebos Waterway; (3) Sitcum Waterway, (4) St. Paul Waterway; (5) Middle Waterway; (6) and (7) Head and Mouth of Thea Foss Waterway; (8) the Wheeler-Osgood Waterway; and (9) Asarco sediments.

13. The defendant owned, leased or operated on property along either the Head or the Mouth of the Hylebos Waterway.

14. At times relevant hereto, the operations conducted by the defendant resulted in the disposal of hazardous substances at or to the Hylebos Waterway Problem Areas.

15. There were and are "releases," as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9607 (22), and the threat of continuing releases, of "hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Hylebos Waterway Problem Areas.

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1 OF COUNSEL:

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